

**Introduced by Senator Margett**

February 24, 2006

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An act to amend Section 7104 of the Public Contract Code, relating to public works.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1605, as introduced, Margett. Public contracts: public works.

Exiting law requires any public works contract of a local public entity that involves digging trenches or other excavations that extend deeper than 4 feet below the surface contain a clause that provides: (1) that the contractor is required to notify the public entity of specified conditions concerning hazardous waste, subsurface or latent conditions, or unknown physical conditions, (2) that the public entity is required to promptly investigate the conditions and if it makes certain findings regarding the conditions, a change order shall be issued under the procedures described in the contract, and (3) that, as specified, in the event a dispute arises between the public entity and the contractor, the contractor shall not be excused from performance.

This bill would specify that the contractor notify in writing the local public entity of any subsurface or latent physical conditions that differ from the conditions identified by the public entity at the time the local public work contract was awarded.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 7104 of the Public Contract Code is  
2     amended to read:

1 7104. Any public works contract of a local public entity  
2 which involves digging trenches or other excavations that extend  
3 deeper than four feet below the surface shall contain a clause  
4 which provides the following:

5 (a) That the contractor shall promptly, and before the  
6 following conditions are disturbed, notify the *local* public entity,  
7 in writing, of any:

8 (1) Material that the contractor believes may be material that is  
9 hazardous waste, as defined in Section 25117 of the Health and  
10 Safety Code, that is required to be removed to a Class I, Class II,  
11 or Class III disposal site in accordance with provisions of  
12 existing law.

13 (2) Subsurface or latent physical conditions at the site  
14 differing from those ~~indicated~~ *conditions identified by the local*  
15 *public entity at the time the contract for the public work was*  
16 *awarded.*

17 (3) Unknown physical conditions at the site of any unusual  
18 nature, different materially from those ordinarily encountered  
19 and generally recognized as inherent in work of the character  
20 provided for in the contract.

21 (b) That the *local* public entity shall promptly investigate the  
22 conditions, and if it finds that the conditions do materially so  
23 differ, or do involve hazardous waste, and cause a decrease or  
24 increase in the contractor's cost of, or the time required for,  
25 performance of any part of the work shall issue a change order  
26 under the procedures described in the contract.

27 (c) That, in the event that a dispute arises between the *local*  
28 public entity and the contractor whether the conditions materially  
29 differ, or involve hazardous waste, or cause a decrease or  
30 increase in the contractor's cost of, or time required for,  
31 performance of any part of the work, the contractor shall not be  
32 excused from any scheduled completion date provided for by the  
33 contract, but shall proceed with all work to be performed under  
34 the contract. The contractor shall retain any and all rights  
35 provided either by contract or by law which pertain to the  
36 resolution of disputes and protests between the contracting  
37 parties.